

REMARKS

Claims 1-18 remain in the application.

Reconsideration of this application is respectfully requested.

Claim Rejections - 35 U.S.C. § 103:

Claims 1-7 and 9-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bayer (DE 20009908, published 8/31/00; English Translation of DE 20009908 is provided by US 2002/0172386) in view of Taenzer et al. (6,009,183).

Claims 1, 8, and 14-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Taenzer et al. in view of Bayer.

Applicant respectfully traverses. Neither reference taken individually or in combination teaches that which is claimed by applicant. The Examiner conceded in the rejection of independent claim 1 that Bayer fails to disclose that the sound delivery tube is a one size tube that fits substantially all ear shapes and sizes. The Examiner further conceded in the rejection of independent claim 1 that Taenzer fails to disclose a self-retaining element that rests beneath an inferior crus of the ear and provides positive retention of the communication device to the ear when the sound delivery tube is positioned for non-occluded sound delivery to the ear.

Bayer teaches away from Taenzer in that the Bayer invention must be individually adapted to the anatomy of the patient [Abstract, 0001]. The Bayer invention would not work with a one size sound tube because stabilization would be impacted. The term “stabilization” taught by Bayer is used in the context of the earpiece stabilizing the sound tube [0007] and [0044] in the region of the entrance of the auditory canal [0059] for the purpose of minimizing distortion [0004] which is the primary task of Bayer [0004]. A one size tube, if used in Bayer, would impact distortion. Thus, there is no incentive to combine these two references.

Accordingly, the 103 rejection is overcome and Applicant respectfully requests that claim 1 be allowed. Claims 2-26 are dependent claims providing further limitations to what is believed to be an allowable independent claim 1.

Examiner's Response to Arguments

The Examiner made reference to DE 3618002, DE3826897 and WO9211737, so that Applicants could acquire further background on the term "otoplasty". All three of these references are entirely in German and no mention of equivalent translated counterparts was cited. The American Heritage® Stedman's Medical Dictionary Copyright © 2002, 2001, 1995 by Houghton Mifflin Company, Published by Houghton Mifflin Company, defines the term otoplasty as: [t]he surgical repair, restoration, or alteration of the auricle of the ear.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

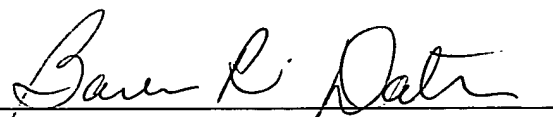
Please charge any fees associated herewith, including extension of time fees, to **Deposit Account 50-2117**.

Respectfully submitted,

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